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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN;
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; THE WESTERN MONTANA
COMMUNITY CENTER; MONTANA
PRIDE; THE GREAT FALLS LGBTQ+
COMMUNITY CENTER; THE ROXY
THEATER; and THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and THE CITY OF
HELENA,

Defendants.

Cause No.
CV-23-50-BU-BMM

**Statement of Undisputed
Facts in Support of
Plaintiffs' Motion for
Summary Judgment on
Counts IV & V**

I. Legislative History

1. Representative Braxton Mitchell introduced House Bill 359 (“HB 359”) on January 28, 2023.¹ Ex. 1, HB 359, Version 1 (introduced Jan. 28, 2023).²

2. Initially, HB 359 sought to prevent minors from viewing drag performances in “nightclub[s], bar[s], restaurant[s], or similar commercial enterprise[s],” or “publicly funded” libraries and schools. This original version of HB 359 did not limit its scope to “obscene” performances. *Id.* at 1–2.

3. At a Senate Judiciary hearing on April 4, 2023, Representative Mitchell expressed his understanding of the necessity for HB 359: “We already prohibit children from . . . viewing obscene material, viewing pornography, going to strip clubs . . . This is not any type of First Amendment violation, and it’s time we add drag shows to that list.” Mont. Leg., S. Judiciary Comm. Hrg. at 8:55:10–8:55:27 (Apr. 4, 2023).³

¹ “Legislative history is properly a subject of judicial notice.” *Anderson v. Holder*, 673 F.3d 1089, 1093–94 n.1 (9th Cir. 2012).

² Available at https://leg.mt.gov/bills/2023/HB0399//HB0359_1.pdf.

³ Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47987?agendaId=269135>.

4. Representative Mitchell also made the following statements before the Senate Judiciary Committee:

Nationwide . . . drag queens are entering schools, half-naked, and reading to children. The Democrat Attorney General in Michigan has called for a drag queen in every school in America to ‘help children when they’re having emotional issues.’ Well, I think that’s what counselors are for, not hypersexualized drag queens. There’s clearly a sick agenda being pushed here.

Id. at 8:54:46–8:55:06.

5. Proponent of the bill Jeff Laszloffy echoed Mitchell’s sentiments, stating, “there are no little kids out there begging to be told a story by a drag queen. But suddenly, for some strange reason, drag queens are begging to tell stories to little kids.” *Id.* at 8:56:22–8:56:34.

6. Citizen proponent Jessie Browning added, “Drag queens have been inserting themselves in areas children frequent, such as libraries and schools,” and stated that exposure to drag queens during childhood can lead to “depression, eating disorders, anxiety, . . . sexual acts at an earlier age, . . . intimacy issues, or sex addictions.” *Id.* at 9:01:45–9:02:29.

7. Another proponent, Kathy Butterfield, stated, “parents who support bringing their minors to [drag shows] are just as liable as the performers and should be held accountable. . . . Adults that support

subjecting their minors to these shows are fulfilling their own dreams and affecting minors in a very, very negative and profound way for life.”

Id. at 9:03:28–9:03:50.

8. But not a single proponent who testified in support of HB 359 at the April 4, 2023 Senate Judiciary Committee hearing cited any evidence of inappropriately sexual events occurring in Montana. *See generally id.* at 8:55:45–9:04:14.

9. In his closing remarks at the April 4, 2023 Senate Judiciary hearing, Representative Mitchell further explained his reasoning for sponsoring the bill:

Due to the mature themes surrounding drag shows and the exposure to inappropriate activities, children may adopt and accept certain stereotypes or attitudes that could lead to social, psychological, linguistic difficulties. Children may also create an inadequate understanding of gender roles and experiences, which is damaging to their long-term social and emotional development.

Id. at 11:10:05–11:10:20.

10. HB 359 was amended several times throughout the legislative process.

11. A third, amended version sought to limit HB 359’s scope to “obscene” performances, as already defined in Montana law. Ex. 2, HB 359, Version 3 (Apr. 14, 2023).⁴

12. The definition of “obscene” incorporated by the third amended version of HB 359 uses the three prongs of the *Miller* test. *Id.*; Mont. Code Ann. § 45-8-201; *Miller v. California*, 413 U.S. 15 (1973).

13. A fourth amended version was proposed by a co-sponsor of HB 359, Senator Chris Friedel, on April 17, 2023. Mont. Leg., S. Fl. Sess. at 18:11:13–18:11:20 (Apr. 17, 2023).⁵

14. Senator Friedel’s amendments removed all references to “drag” and instead focused on “adult-oriented” performances and businesses. Ex. 3, HB 359, 2nd Reading Amend. (adopted Apr. 17, 2023).⁶

15. Specifically, the fourth version of HB 359 prohibited “adult-oriented business[es]” from allowing minors “to enter the premises . . . during an adult-oriented performance,” and imposed restrictions on

⁴ Available at https://leg.mt.gov/bills/2023/HB0399/HB0359_3.pdf.

⁵ Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/46256?agendaId=273842>.

⁶ Available at <https://leg.mt.gov/bills/2023/AmdHtmS/HB0359.003.002.PDF>.

“adult-oriented performance[s]” in state-funded schools and libraries and on public property. *Id.*

16. While defending his amendment on the Senate floor, Senator Friedel explained that, although he supports the intent of HB 359, he “had heartburn over [the] bill, and [he] talked to a lot of attorneys” about it. Mont. Leg., S. Fl. Sess. at 18:11:37–18:11:42 (Apr. 17, 2023).

17. Senator Friedel also stated, “I can tell you right now, if that bill goes as [it was written], even the most conservative judge will strike it down for unconstitutionality.” *Id.* at 18:11:50–18:11:59.

18. Senator Friedel argued that his amendment to HB 359 would ensure that the Montana Attorney General could defend the bill in court. *Id.* at 18:12:00–18:12:12.

19. Other bill proponents were unpersuaded.

20. Senator Karl Glimm characterized Senator Friedel’s amendment as “not friendly”; he argued that the amendment “completely derails the intent of the legislation” and “allows all these [drag performances] under art, so it completely guts the bill.” *Id.* at 18:12:18–18:12:50.

21. Senator Brad Molnar similarly opposed the amendment, explaining that the bill originally had been motivated by public outrage over “drag queen story hour[s]” at ZooMontana, a private business, and at “the library” (which was not further identified). *Id.* at 18:13:18–18:13:27. He argued that Senator Friedel’s amendment did not adequately prohibit such activities:

I don’t know that a story hour for children, though performed by people in full drag, would actually be covered by this bill if it were amended in this form. In the first place I’m not sure with a six-year-old if there is a prurient interest, and I’m positive that reading to children, even in drag, would not be considered an adult-oriented performance.

Id. at 18:13:38–18:14:10.

22. After Senator Friedel’s amendments passed, Representative Mitchell moved to send the bill to a free conference committee. Mont. Leg., H. Fl. Sess. at 16:54:45–16:55:25 (Apr. 24, 2023).⁷

23. During the free conference committee hearing on HB 359, Senator Friedel testified that he introduced the “drag story hour” amendments based on his belief that “we need to keep things like sexual

⁷ Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/49742?agendaId=276646>.

orientation out of schools and out of libraries.” Mont. Leg., Free Conference Comm. Hrg. at 12:11:05–12:11:10 (Apr. 26, 2023).⁸

24. During the free conference committee hearing on HB 359, Representative Mitchell introduced amendments that would become the fifth and final version of HB 359. Mont. Leg., Free Conference Comm. Hrg. on HB 359 (Apr. 26, 2023);⁹ Ex. 4, HB 359 (enrolled May 9, 2023).¹⁰

25. Representative Mitchell’s fifth version of the bill reintroduced the restrictions on “drag” that Senator Friedel’s amendment had removed. *Compare* Ex. 4, *with* Ex. 3. In Representative Mitchell’s words, “The reason we have to specifically . . . say that we’re prohibiting story hours is because all they do is call it art. That’s how they get around it.” Mont. Leg., Free Conference Comm. Hrg. at 12:29:10–12:29:17 (Apr. 26, 2023).

⁸ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20230426/-1/49764#handoutFile_.

⁹ Available at [http://laws.leg.mt.gov/legprd/LAW0240W\\$CMTE.ActionQuery?P_SESS=20231&P_COM_NM=Free+Conference+Committee+on+HB+359&P_ACTN_DTM=04/26/2023&U_ACTN_DTM=04/26/2023&Z_ACTION2=Find](http://laws.leg.mt.gov/legprd/LAW0240W$CMTE.ActionQuery?P_SESS=20231&P_COM_NM=Free+Conference+Committee+on+HB+359&P_ACTN_DTM=04/26/2023&U_ACTN_DTM=04/26/2023&Z_ACTION2=Find).

¹⁰ Available at <https://leg.mt.gov/bills/2023/billpdf/HB0359.pdf>.

26. Neither Senator Friedel’s fourth set of amendments to HB 359 nor Representative Mitchell’s fifth and final version of HB 359 incorporate the *Miller* test. *See generally* Ex. 3; Ex. 4; Mont. Code Ann. § 45-8-201.

27. In its final form, HB 359 prohibits a wider range of conduct than covered by preexisting Montana obscenity law in Montana Code Annotated § 45-8-201. *See* Ex. 4; Mont. Code Ann. § 45-8-201.

28. On a subsequent House floor session, Representative Mitchell explained the free conference committee’s amendments: “The reason [we specifically prohibit ‘drag’ story hour in the bill] is because all they have to do is call it ‘art’ story hour, and they get away with it.” Mont. Leg., H. Fl. Sess. at 14:22:00–14:22:16 (May 1, 2023).¹¹

29. HB 359 went into effect on May 22, 2023. Ex. 4, HB 359, § 7.

II. HB 359

30. HB 359 targets two related yet distinct modes of expressive conduct. *See* Ex. 4, HB 359, §§ 2–3.

¹¹ *Available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/46179?agendaId=278282>.

31. First, HB 359 prohibits the holding of a “drag story hour” in “[a] school or library that receives any form of funding from the state . . . during regular operating hours or at any school-sanctioned extracurricular activity.” *Id.* § 3(2).

32. HB 359 defines a “drag story hour” as “an event hosted by a drag queen or drag king who reads children’s books and engages in other learning activities with minor children present.” Ex. 4, HB 359, § 1(3).

33. HB 359 does not define “other learning activities.” *See id.* § 1.

34. HB 359 defines “drag king” and “drag queen” as “a male or female performer who adopts a flamboyant or parodic [male or feminine] persona with glamorous or exaggerated costumes and makeup. *Id.* § 1(1), (2).

35. HB 359 does not define “flamboyant,” “parodic,” “glamorous,” “exaggerated,” “costumes,” or “makeup.” *See id.* § 1.

36. A person who violates the drag story hour restriction faces criminal penalties. Upon conviction, “[a] library, a school, or library or school personnel, [or] a public employee” “shall be fined \$5,000.” *Id.* § 3(4).

37. If the person who violates the drag story hour restriction is a schoolteacher, administrator, or specialist, “proceedings must be initiated to suspend the . . . certificate of the offender under [Montana Code Annotated §] 20-4-110.” *Id.* Upon a second or subsequent conviction, “proceedings must be initiated to permanently revoke the teacher, administrator, or specialist certificate of the offender.” *Id.*

38. Any person involved in organizing or conducting a drag story hour—“a person who knowingly promotes, conducts, or participates as a performer”—is subject to civil liability. Ex. 4, HB 359, § 4(1).

39. Any minor who attends a drag story hour—even with a guardian’s consent—may sue within ten years. *Id.* § 4(3). Plaintiffs who prevail in enforcing HB 359 are guaranteed statutory damages of \$5,000 and attorney’s fees and costs. They are also entitled to “actual damages, including damages for psychological, emotional, economic, and physical harm.” *Id.* § 4(2).

40. The citizen-suit provision is not limited to drag story hours occurring after HB 359’s effective date. *Id.* § 4.

41. Second, HB 359 prohibits certain “sexually oriented performances.” *Id.* § 3(3).

42. HB 359 defines “sexually oriented performance” as “a performance that, regardless of whether performed for consideration, is intended to appeal to a prurient interest in sex and features:”

- (a) the purposeful exposure, whether complete or partial, of:
 - (i) a human genital, the pubic region, the human buttocks, or a female breast, if the breast is exposed below a point immediately above the top of the areola; or
 - (ii) prosthetic genitalia, breasts, or buttocks;
- (b) stripping; or
- (c) sexual conduct.

Id. § 1(10).

43. HB 359 defines “sexually oriented” as “any simulation of sexual activity, stripping, salacious dancing, any lewd or lascivious depiction or description of human genitals or of sexual conduct as defined in [Montana Code Annotated §] 45-5-625.” Ex. 4, HB 359 § 1(8). This cross-reference provides HB 359’s only definition of “sexual conduct.”

44. There is no clear indication that the meaning of “sexual conduct” within the separate definition of “sexually oriented performance” is similarly constrained by cross-reference to Mont. Code Ann. § 45-5-625. Ex. 4, HB 359.

45. “Stripping” is not limited to performances involving nudity or semi-nudity; it is defined as the “removal or simulated removal of clothing in a sexual manner for” entertainment. Ex. 4, HB 359, § 1(11).

46. HB 359 does not define “sexual manner.” *See id.* § 1.

47. HB 359 does not limit the prohibition on “sexually oriented performances” to live performances. *See* Ex. 4, HB 359, § 1.

48. HB 359 does not define “performance.” *Id.*

49. “Sexually oriented performances” are prohibited in schools and libraries that receive any state funding, *id.* § 3(1), (2); “on public property in any location where the performance is in the presence of an individual under the age of 18,” *id.* § 3(3)(a); and “in a location owned by an entity that receives any form of funding from the state,” even if minors are not present, *id.* § 3(3)(b).

50. Schools and libraries that receive “any form of funding from the state” may not allow sexually oriented performances “during regular operating hours or at any school-sanctioned extracurricular activity.” *Id.* § 3(2).

51. “Sexually oriented performances” are restricted in “sexually oriented businesses” to adult-only audiences. *Id.* § 2(1).

52. A “[s]exually oriented business” is defined as “a nightclub, bar, restaurant, or similar commercial enterprise that:”

- (a) provides for an audience of two or more individuals:
 - (i) live nude entertainment or live nude performances;
or
 - (ii) a sexually oriented performance; and
- (b) authorizes on-premises consumption of alcoholic beverages.

Ex. 4, HB 359, § 1(9).

53. Violators of the provisions governing “sexually oriented performances” face various criminal and civil penalties. *Id.* §§ 2–4.

54. Business owners, operators, managers, and employees of “sexually oriented businesses” are subject to mandatory criminal fines ranging from \$1,000 to \$10,000 and the loss of the business’s license. *Id.* § 2(2). Upon conviction, “[a] library, a school, or library or school personnel, a public employee, [an entity that receives state funds], or an employee of the entity” “shall be fined \$5,000.” *Id.* § 3(4).

55. Civil liability also applies to anyone who “knowingly promotes, conducts, or participates as a performer” in a “sexually oriented performance.” *Id.* § 4(1). Any minor who attends a “sexually oriented performance”—even with a guardian’s consent—may sue within ten years. *Id.* § 4(3). Plaintiffs are guaranteed statutory damages of

\$5,000 and attorney’s fees and costs. Plaintiffs are also entitled to “actual damages, including damages for psychological, emotional, economic, and physical harm.” *Id.* § 4(2).

III. Plaintiffs

56. Adria Jawort is a transgender woman, member of the Northern Cheyenne Tribe, and part of the Two-spirit community. Ex. 5, Decl. of Adria Jawort, ¶¶ 2, 3 (July 17, 2023).

57. On June 2, 2023, Jawort was scheduled to give a lecture on Indigenous and transgender history at the Butte Public Library. *Id.* ¶ 6.

58. The day before the lecture, a librarian at the Butte Public Library informed Jawort that her lecture was cancelled. *Id.* ¶ 7.

59. J.P. Gallagher, the chief executive of the City-County of Butte-Silver Bow, Montana, determined that, after the passage of HB 359, “it is too much of a legal risk to have a transgendered person in the library.” *Id.* ¶¶ 7–8.

60. After Jawort’s event was cancelled, the City and County of Butte-Silver Bow posted the following message on its Facebook page:

In accordance with Governor Gianforte signing HB359 into law, our county cannot allow an event where a drag king or queen reads children’s books and engages in other learning activities with minor children present. Due to this law, we

have had to cancel the speaker at the Butte-Silver Bow Library that was scheduled for Friday.

Id. ¶ 8.

61. For her lectures, Jawort does not dress in “drag.” Nor does she identify as a “drag queen” or “drag king.” *Id.* ¶ 10.

62. Rachel Corcoran is a licensed teacher in Montana. Ex. 6, Decl. of Rachel Corcoran, ¶ 3 (July 17, 2023).

63. Corcoran dresses as fictional and historical characters, without regard for the gender or sex of the person being portrayed. *Id.* ¶ 8.

64. Corcoran fears that continuing to dress in gendered costumes puts her in violation of HB 359’s criminal, civil, and occupational penalties, yet she plans to continue this practice. *Id.* ¶¶ 10–11.

65. The Imperial Sovereign Court of the State of Montana (“Imperial Court”) is a Montana nonprofit organization that produces community-based drag performances that explore multiple gender expressions in a safe, educational, and entertaining atmosphere. Ex. 7, Decl. of Annatheia Smith, ¶¶ 3, 7 (July 17, 2023); Ex. 8, Decl. of Mitchell Locher, ¶¶ 3, 7 (Nov. 22, 2023).

66. The Imperial Court’s mission is “to educate and advocate for LGBTQ+ individuals and allies through the production of community-based drag performances that explore multiple gender expressions in an entertaining and educational atmosphere and create a safe and welcoming environment.” Ex. 7, ¶ 7; Ex. 8, ¶ 7.

67. The Imperial Court puts on a variety of age-appropriate drag performances and takes steps to ensure that minors do not attend adult-only performances. Ex. 7, ¶ 12; Ex. 8, ¶¶ 12.

68. At all-ages performances, the Imperial Court limits their repertoire to age-appropriate lip syncing and costumes. Ex. 7, ¶¶ 13–14; Ex. 8, ¶¶ 13–14.

69. All Imperial Court performances include “flamboyant” and/or “exaggerated” costumes and makeup as contemplated by HB 359. Ex. 7, ¶ 15; Ex. 8, ¶ 15.

70. Imperial Court drag shows may include “sexually oriented performance[s],” as defined by HB 359. Ex. 7, ¶ 15; Ex. 8, ¶ 15.

71. Since the passage of HB 359, the Imperial Court has had multiple shows cancelled, postponed, or modified. Ex. 7, ¶ 18; Ex. 8, ¶ 18.

72. A show at the Museum of the Rockies originally scheduled for August 26, 2023, was repeatedly rescheduled with no indication that it will ever happen. Ex. 7, ¶ 19; Ex. 8, ¶ 19.

73. The Imperial Court had a drag story hour event scheduled for June 22, 2023, at Zoo Montana in Billings, Montana, but it was postponed indefinitely. Ex. 7, ¶ 20; Ex. 8, ¶ 20.

74. For scheduled performances at Red Lodge Pride on June 2 and 3, 2023, the Imperial Court hired police officers for the performers' safety, restricted all-ages performances, and modified the performers' costumes because of concern of HB 359's penalties. Ex. 7, ¶ 21; Ex. 8, ¶ 21.

75. At Missoula Pride on June 17, 2023, event organizers chose not to advertise the Imperial Court's drag story hour and modified elements of its all-ages show because of concern of HB 359's penalties. Ex. 7, ¶ 22; Ex. 8, ¶ 22.

76. At Billings Pride, held from June 22 to June 24, 2023, event organizers did not advertise the Imperial Court's drag story hour, and the Imperial Court was forced to limit its performances due to fears of liability under HB 359. Ex. 7, ¶ 23; Ex. 8, ¶ 23.

77. At Anaconda Pride on June 30, 2023, the Imperial Court changed their 16+ show to adults-only. Ex. 7, ¶ 24; Ex. 8, ¶ 24.

78. At Butte Pride on July 1, 2023, the Imperial Court self-imposed dress restrictions and chose not to advertise an all-ages drag show. Ex. 7, ¶ 25; Ex. 8, ¶ 25.

79. At Libby Pride on July 8, 2023, the Imperial Court modified performances and chose not to advertise. Ex. 7, ¶ 26; Ex. 8, ¶ 26.

80. The Imperial Court is a membership organization, and, since the passage of HB 359, its members have been fearful of legal action the State of Montana may take against them if they continue their performances. Ex. 7, ¶¶ 4, 28; Ex. 8, ¶¶ 4, 27.

81. The Western Montana Community Center and the Great Falls LGBTQ+ Center (“The Centers”) offer community events, programs, and services aimed at supporting the Montana LGBTQ+ community and its allies. Ex. 9, Decl. of James Bamfield, ¶¶ 2–3 (Nov. 22, 2023); Ex.16, Decl. of Andy Nelson, ¶¶ 5–7 (Nov. 22, 2023).

82. The Centers host events that sometimes include drag performances, and they have hosted family-friendly, age-appropriate events featuring drag performers. Ex. 9, ¶¶ 9–10; Ex. 16, ¶ 9.

83. HB 359 has already chilled The Centers' speech. Ex. 9, ¶ 14; Ex. 16, ¶ 13–14.

84. The Great Falls LGBTQ+ Center is concerned about liability under HB 359 because the law appears to prohibit some of the performances it hosts. Ex. 9, ¶ 13.

85. Specifically, the Great Falls LGBTQ+ Center modified its annual Halloween party in 2023: whereas past Halloween events featured drag queen appearances, this year's party did not, due to fear of HB 359's impact. Ex. 9, ¶ 14.

86. Similarly, the Western Montana Community Center has been unable to determine the precise scope of HB 359 and has already modified its speech and conduct out of fear of violating the law. Ex. 16, ¶¶ 12–13.

87. For example, the Western Montana Community Center has restricted audiences for drag performances that were not age-restricted in prior years. *Id.* ¶ 14.

88. During Missoula Pride in 2023, the Western Montana Community Center modified its annual drag brunch at the University of Montana because the venue was publicly owned. *Id.*

89. Some drag performers associated with the Western Montana Community Center refused to perform during Missoula Pride, citing fear of HB 359's repercussions. *Id.* ¶ 15.

90. Bumblebee Aerial Fitness is a fitness studio in Helena, Montana with a focus on pole fitness, silks hammock, and aerial hoop. Ex. 10, Decl. of Sabrina Malecek, ¶ 4 (July 17, 2023).

91. Because some Bumblebee Aerial Fitness performances feature costumes that are skin-tight in some parts of the body and because the performances may feature pole dancing, Bumblebee Aerial Fitness performers fear prosecution under HB 359. *Id.* ¶¶ 15, 18.

92. Bumblebee Aerial Fitness was scheduled to model for a drawing class while on poles at Ascension Brewery in Helena, Montana, but the event was cancelled because of HB 359. *Id.* ¶ 21.

93. Bumblebee Aerial Fitness was invited to perform at the Rodney Street Block Party in Helena, Montana, but after the passage of HB 359, the event organizers withdrew the invitation. *Id.* ¶ 22.

94. Overall, after the passage of HB 359, Bumblebee Aerial Fitness has lost beginner-level performance opportunities as

organizations have reacted to the uncertainty and repercussions of HB 359. *Id.* ¶ 24.

95. The Roxy Theater is a nonprofit, community-owned theater located in downtown Missoula, Montana. Ex. 11, Decl. of Mike Steinberg, ¶ 2 (July 17, 2023).

96. In July 2023, the Roxy Theater showed *Asteroid City*, a film rated PG-13 by the Motion Picture Association. *Id.* ¶¶ 13–14.

97. In one scene of *Asteroid City*, the actress Scarlett Johansson disrobes and steps into a bathtub. This scene meets HB 359’s definition of “stripping” because it involves the removal of clothing in a sexual manner for entertainment purposes and is thus a “sexually oriented performance.” *Id.* ¶ 15.

98. In June 2023, the Roxy Theater hosted Queerwest Film Fest, a film festival centered on the experience of LGBTQ+ individuals in the American West. *Id.* ¶¶ 23–24.

99. As part of Queerwest Film Fest, the Roxy Theater hosted an all-ages drag show featuring drag queens and drag kings. *Id.* ¶¶ 26–27.

100. During the Queerwest Film Fest drag show, performers removed the outer layers of their costumes and wore prosthetic breasts, with no resulting nudity. *Id.* ¶ 28.

101. This drag show is a “sexually oriented performance,” according to HB 359, and the Roxy Theater would be in violation of HB 359’s penalty provisions for featuring this performance to an all-ages audience. *Id.* ¶¶ 10–12, 28–29.

102. The Roxy Theater employs transgender people and drag kings and drag queens who perform educational events at the theater. *Id.* ¶ 30.

103. The Roxy Theater sometimes provides live accompaniment to films, which include drag performances. *Id.* ¶ 37.

104. The Roxy Theater receives state funding through the Montana Arts Council. *Id.* ¶ 3.

105. The Roxy Theater authorizes on-premises consumption of alcohol. *Id.* ¶ 11.

106. Because the Roxy Theater authorizes on-premises consumption of alcohol and displays films and events deemed “sexually oriented performances” under HB 359, the Roxy Theater is a “sexually oriented business” as understood by HB 359. *Id.* ¶ 12.

107. The Roxy Theater owners and employees fear they face criminal and/or civil liability for continuing to show films with artistic merit and continuing hosting events that may be deemed “sexually oriented performances” under HB 359. *Id.* ¶¶ 39–42.

108. The Myrna Loy is a theater and live event space in Helena, Montana. Ex. 12, Decl. of Krys Holmes, ¶ 2 (July 16, 2023).

109. The Myrna Loy receives state funding. *Id.* ¶ 3.

110. The Myrna Loy authorizes the on-site consumption of alcohol. *Id.* ¶ 10.

111. The Myrna Loy has hosted films and live events that would be deemed “sexually oriented performance[s]” under HB 359, including live and recorded drag shows. *Id.* ¶ 7.

112. Like the Roxy Theater, the Myrna Loy also screened *Asteroid City*. *Id.* ¶ 12.

113. Because the Myrna Loy authorizes on-premises consumption of alcohol and displays films and events deemed “sexually oriented performances” under HB 359, the Myrna Loy is a “sexually oriented business” as understood by HB 359. *Id.* ¶ 11.

114. Myrna Loy owners and employees fear they face criminal and/or civil liability for continuing to show films with artistic merit. *Id.* ¶ 18.

115. The Montana Book Company is a bookstore located in Helena, Montana. Ex. 13, Decl. of Chelsia Rice, ¶ 3 (July 17, 2023).

116. The Montana Book Company has received state funding in the form of COVID relief. *Id.* ¶ 7.

117. The Montana Book Company has hosted drag story hours at which drag queens and drag kings wearing prostheses have read books to children. *Id.* ¶ 12.

118. The Montana Book Company sells books and hosts readings that include depictions of sexual content as defined in HB 359. *Id.* ¶ 8.

119. At the Montana Book Company on June 21, 2023, the author Debra Magpie Earling read from her novel *The Lost Journals of Sacajawea*, which included descriptions of genitalia. *Id.* ¶¶ 9–10.

120. Because the Montana Book Company plans to continue to host events considered “sexually oriented performances” and sell material with sexual content, its owners and employees fear criminal and civil penalties under HB 359. *Id.* ¶¶ 14–15.

121. Imagine Brewing Company, d/b/a Imagine Nation Brewing Company (“Imagine Nation”), is a community-oriented brewery and community center located in Missoula, Montana. Ex. 14, Decl. of Tim Graham, ¶ 5 (Nov. 16, 2023).

122. Imagine Nation has hosted all-ages drag performances and drag story hours and plans to continue to do so. *Id.* ¶¶ 15–19. Imagine Nation sells alcoholic beverages during these events. *Id.* ¶ 10.

123. Imagine Nation believes that, under HB 359’s definitions, it is a “sexually oriented business” and therefore fears liability under the law for hosting all-ages drag performances and drag story hours. *Id.* ¶¶ 14, 21.

124. Montana Pride is Montana’s annual statewide LGBTQ+ Pride celebration held in Helena, Montana. Ex. 15, Decl. of Kevin Hamm, ¶ 4 (July 17, 2023).

125. Montana Pride includes drag performances. *Id.* ¶ 8.

126. On July 13, 2023, the City of Helena informed Montana Pride organizers that the city could not issue the requested event permits while HB 359 remained in effect. *Id.* ¶ 14.

127. The Court granted a temporary restraining order blocking the enforcement of HB 359 so that Montana Pride events could go forward without the risk of liability under HB 359. Doc. 13 at 19–20.

128. Lewis and Clark Library (“the Library”) is a state-funded public library based in Lewis and Clark County. Ex. 17, Decl. of Ronald Waterman, ¶¶ 5, 7 (Nov. 21, 2023).

129. The Library has never planned to present any “drag story time”; however, staff members and the board are concerned that the Library’s anticipated programming might violate HB 359. *Id.* ¶ 10.

130. For example, the Library hosts an annual outdoor film festival. In 2023, it chose to display the classic film *Some Like it Hot*, which features two male musicians who disguise themselves as female musicians to escape from the mob. *Id.* ¶¶ 12–14.

131. Concerned that the film exhibition might violate HB 359, the Library Director planned to cancel the event, even though the Library purchased the license to show the film, hired a projection company, and paid for park permits. *Id.* ¶¶ 15–17.

132. After HB 359 was temporarily enjoined, the Library decided to go forward with the film screening. *Id.* ¶ 19.

133. Due to HB 359's vagueness, members of the Library's board do not feel equipped to effectively advise the Library's staff on how to comply with the law. *Id.* ¶ 20.

Respectfully submitted this 28th day of November, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed in CM/ECF on November 28, 2023, and served upon all registered users.

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